

## **FAMILY AND MEDICAL LEAVE ACT (FMLA) AND CALIFORNIA FAMILY RIGHTS ACT (CFRA)**

**1038**

(No.173 February 2016)

### **DEFINITION**

**1038.1**

(No.173 February 2016)

FMLA and CFRA require the California Department of Forestry and Fire Protection (CAL FIRE) to provide up to twelve (12) workweeks of unpaid, job-protected leave during a 12-month calendar period for specified family members and medical reasons for eligible employees.

Under FMLA, eligible employees are entitled to up to twenty-six (26) workweeks of unpaid, job protected leave during a 12-month calendar period to care for a covered service member.

Both acts require the Department to continue medical benefit coverage (i.e., health, dental, and vision) at the same level while the employee is on family/medical leave. FMLA and CFRA are unpaid leaves.

An employee who pays a portion of the medical insurance premium toward these benefits is still responsible for paying his/her share of the premium while on unpaid FMLA/CFRA leave. If necessary, the Department will pay the full premium while the employee is on the unpaid FMLA/CFRA leave and will establish an accounts receivable when the employee returns to recover the employee's portion of the premium.

NOTE: Eligible employees on approved FMLA/CFRA leave may use their accrued leave credits to receive payment during the leave.

### **AUTHORITY**

**1038.2**

(No.144 February 2016)

[Family Medical Leave Act: 29 Code of Federal Regulations, Part 825](#)

[California Family Rights Act: California Code of Regulations, Title 2, Division 4, Section 7297.0 et seq.](#)

[National Defense Authorization Act for Fiscal Year 2010.](#)

[California Department of Human Resources Memorandums 1993-48, 2002-041, 2003-051, 2005-002, 2008-008, 2010-009, and 2014-019.](#)

[California Unemployment Insurance Code, Section 3300-3306](#)

### **ENFORCEMENT**

**1038.3**

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The FMLA is a federal law and is administered and enforced by the U.S. Department of Labor (DOL) Employment Standards Administrations, Wage and Hour Division.

The CFRA is a state law and is administered and enforced by the California Department of Fair Employment and Housing.

Where the FMLA and CFRA laws differ, the most generous/less restrictive leave provisions must be applied. If the FMLA and CFRA can run concurrently, they will run concurrently for the eligible employee to receive the most benefits of both laws.

Neither the FMLA nor CFRA supersede any applicable Bargaining Unit Memorandum of Understanding that provides greater family or medical leave rights.

## **ELIGIBILITY**

**1038.4**

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To be eligible for FMLA/CFRA leave, an employee must meet all **four** of the following requirements:

1. Be employed by CAL FIRE;
2. Be employed by the state at least 12 months (52 workweeks);
3. Worked at least 1,250 hours (actual time worked) during the prior 12 months; and
4. Have a qualifying event.

## **QUALIFYING EVENTS**

**1038.5**

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Qualifying events are reasons for the need of FMLA and/or CFRA leave.

<b>Event</b>	<b>FMLA</b>	<b>CFRA</b>	<b>Maximum Workweeks of Leave</b>
Birth and care of an employee's newborn child (birth, placement for adoptions, or foster care).	Yes	Yes	12
<i>Note for birth and care of an employee's newborn child:</i> The minimum duration of child bonding leave shall be two weeks. However, the Department shall grant a request for a child bonding leave of less than two weeks' duration on any two occasions, and will not grant requests for additional occasions of child bonding leave lasting less than two weeks.	Yes	Yes	12

<b>Event</b>	<b>FMLA</b>	<b>CFRA</b>	<b>Maximum Workweeks of Leave</b>
Care for an immediate family member (employee's spouse, child, parent or domestic partner) who has a serious health condition which requires the employee to provide care.	Yes	Yes	12
Employee's own serious health condition that makes him/her unable to work. (See exclusion* below)	Yes	Yes	12
Employee's own serious health condition that makes her unable to work – *for the reason of incapacity due to pregnancy, prenatal medical care or child birth.	Yes	No	12
Employee's spouse, child, or parent who have been called to active duty or is already on active duty as a service member of the U.S. Armed Forces, National Guard, or Reserves, in support of a qualifying exigency. This event provides up to 12 workweeks of leave under FMLA only. CFRA does not recognize military leave time; therefore, CFRA is not exhausted when FMLA leave is taken for a qualifying exigency <sup>1</sup> .	Yes	No	12
Care for employee's spouse, child, parent, or next of kin who was injured while on active military duty (injuries sustained during annual training do not qualify). The qualifying family member must be a current member of the U.S. Armed Forces, National Guard, or Reserves, or a veteran who has been a member of the U.S. Armed Forces, National Guard, or Reserves at any time within five (5) years preceding treatment of the serious injury or illness. The first 12 workweeks would be designated as both FMLA and CFRA leave if the employee's immediate family member or next of kin is covered under CFRA, and the final 14 workweeks would apply against the remaining FMLA entitlement. If next of kin is not a CFRA qualifying family member, CFRA entitlement is not exhausted.	Yes	Only covered if family member or next of kin is covered under CFRA.	26

If an employee has two or more qualifying situations, each can count towards FMLA/CFRA leave but the combined total shall not exceed 12 or 26 weeks per calendar year, depending on the qualifying event.

An employee who is utilizing Family Temporary Disability Insurance (FTDI), also known as Paid Family Leave (PFL), must take the FTDI/PFL concurrent with leave taken under

FMLA and CFRA. It is the responsibility of the Department to notice the employee that the FTDI/PDL time is also being counted towards FMLA/CFRA.

<sup>1</sup>See DOL's [Qualifying Exigency Fact Sheet](#) for more information.

## PROCEDURES FOR FMLA/CFRA

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The following procedures must be followed when an employee requests FMLA/CFRA leave or when a supervisor becomes aware of circumstances that indicate an employee's request for leave may fall under the criteria for FMLA/CFRA.

### Employee's Responsibilities

1. An employee must notify his/her supervisor of a need for leave and the anticipated timing and duration of the leave.

If the leave is foreseen (e.g., planned surgery), the employee must notify his/her supervisor at least 30 days prior to the commencement of the leave.

If the leave was not foreseeable, the employee must give notice to his/her supervisor as soon as the necessity for the leave becomes known. If an employee fails to give 30 days notice of foreseeable leave, with no reasonable excuse for the delay, the Department may deny the leave until at least 30 days after the date the employee provides notice of the need for leave.

2. Although not required, an employee should request leave by completing an Employee Request for Family or Medical Leave ([PO-21](#)) and provide it to his or her supervisor. The supervisor will provide a copy of the completed [PO-21](#) to the assigned Classification and Pay Analyst (C&P Analyst) or Administrative Officer (AO).
3. Most qualifying events require written documentation to support the need for leave. If required, an employee must return a completed:

- Certification of Health Care Provider – Family Member Condition ([PO-16](#)), or
- Certification of Qualifying Exigency – Military Family Leave ([PO-17](#)), or
- Certification for Serious Injury/Illness – Military Family Caregiver Leave ([PO-18](#)) or
- Certification of Health Care Provider – Employee Health Condition ([PO-20](#))

within the required timeframe to the Sacramento Headquarters C&P Analyst or the AO, if located in a Region and/or a Unit. These certification forms will be provided by the supervisor to the employee within 24 hours of notification of the need for leave. ***These forms must be completed within 15 calendar days of the date the employee is noticed by the Department.*** The [PO-16](#), [PO-18](#), and [PO-20](#) must be completed by a Health Care Provider.

If the C&P Analyst or AO receives medical information that provides sufficient information to determine a serious health condition exists, this will take the place of the [PO-16](#), [PO-18](#), or [PO-20](#), and FMLA/CFRA will be designated if the employee meets all other eligibility requirements. An example is an approved claim for Non-Industrial Disability Insurance received by the Department from the Employment Development Department (EDD).

Sufficient information on the medical certification includes:

- The date, if known, on which the serious health condition commenced.
- The probable duration of the condition.
- If intermittent: the frequency and duration per event is required.
- An estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent, or spouse (if applicable)
- A statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent or spouse (if applicable).
- A statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his or her position (if applicable).

If the certification provided by the employee is incomplete or insufficient, the C&P Analyst or Administrative Officer (AO) may request specific additional information, in writing, using a Designation Notice (FMLA/CFRA Leave) ([PO-23](#)), in order to make the FMLA/CFRA leave determination.

An employee has an obligation to respond to the C&P Analyst or AO's questions designed to determine whether an absence is potentially FMLA/CFRA qualifying. Failure to respond to permissible inquiries regarding the leave request may result in denial of FMLA/CFRA protection if the C&P Analyst or AO is unable to determine whether the leave is FMLA/CFRA qualifying.

Employees who fail to provide medical certification or equivalent substantiation may have their FMLA/CFRA benefits delayed or denied.

The Department may retroactively designate leave as FMLA/CFRA only with appropriate notice to the employee and where the Department's failure to timely designate does not cause harm or injury to the employee.

The Department may request re-certification of a serious health condition of an employee or the employee's immediate family member if the time period the Health Care Provider originally estimated the employee needed has expired and an extension of leave is requested.

4. If required, an employee must submit a copy of the official notice of intent to place a child with the employee for adoption or foster care.
5. If required, an employee must submit a copy of the official notice military deployment or return from deployment.
6. An employee must maintain contact with his/her supervisor regarding his or her work/leave status while on leave.

For intermittent or unforeseeable leave, if an employee fails to follow established call-in procedures, except under extraordinary circumstances, the employee may be subject to any applicable disciplinary actions and a delay in FMLA/CFRA coverage until he/she complies with these requirements.

7. If FMLA/CFRA leave is approved, the eligible employee will receive a [PO-23](#) indicating an approval from the C&P Analyst or AO.

If FMLA/CFRA leave is denied, the eligible employee will receive a [PO-23](#) indicating a denial from the C&P Analyst or AO.

8. An employee that is approved for FMLA/CFRA leave must complete a monthly timesheet and attach a completed Attendance and Time Report ([STD. 634](#)) reflecting any FMLA/CFRA usage for the month. The [STD. 634](#) only needs to reflect FMLA/CFRA usage; however the monthly timesheet should reflect any leave credits the employee is requesting to use during unpaid FMLA/CFRA leave in order to receive pay for the absence.

**NOTE:** Employees excluded from the Fair Labor Standards Act (FLSA) generally do not utilize leave in less than whole day increments. However, under FMLA/CFRA deductions may be made from the salary of an excluded employee when the physician requires the employee to work a set reduced schedule for a predetermined period of time. This is true regardless of whether the employee elects paid or unpaid FMLA/CFRA leave. In this case, the excluded employee must indicate the FMLA/CFRA related leave on his or her monthly time sheet. To receive pay for this leave the excluded employee must utilize available leave credits and reflect this on their timesheet.

9. While on FMLA/CFRA leave, an employee is required to report on his/her status and intent to return to work, to his/her supervisor at reasonable intervals. If an employee will be out on leave beyond the date of the approved leave, the employee must notify his/her supervisor. A supervisor may contact the employee to confirm the employee's return date (approximately one workweek before anticipated return date).
10. Taking sick leave in the case of unforeseeable leave is not enough to trigger the Department's obligation to determine if the leave is possibly FMLA/CFRA protected.

When an employee seeks leave due to an FMLA/CFRA qualifying reason for which the Department has previously provided FMLA/CFRA protected leave, the *employee must specifically reference* the qualifying reason for leave in notifying the Department.

11. If the employee returns to work for less than 30 calendar days or if the employee chooses not to return to work upon expiration of the FMLA/CFRA leave, the employee must reimburse the state for health, dental and vision premiums paid on his/her behalf. (This is for employees that have an accounts receivable balance due to the state paying for their premium while on leave).

#### Timekeeper Responsibilities

Due to the absence/timekeeping reporting structure within certain Regions and Units, a supervisor or manager may not be the first person to be notified by an employee of a need for leave. For example, in certain units employees contact the scheduling station and company officer (usually a non-supervisory position) and advise him/her of their absence(s).

1. Due to the time sensitive response requirements of the supervisor and the Department, anyone who is responsible for scheduling must notify the next supervisor in the chain of command or the AO (as appropriate) as soon as possible if an employee is out on leave that may qualify under FMLA/CFRA.

#### Supervisor's Responsibilities

1. A supervisor will become aware of a need for leave in one of the following ways:
  - If he/she receives a request for family or medical leave from an employee (verbally or in writing)
  - If he/she is notified of a request for family and medical leave from the timekeeper/scheduling station personnel or other source, such as another supervisor or another employee
  - If an employee has been absent from work for more than **three** calendar days for a reason that may qualify under FMLA/CFRA.

When a supervisor becomes aware of an employee's need for leave, the supervisor should ask three questions:

1. Has the employee been employed by the state at least 12 months (52 weeks)?
2. Has the employee worked at least 1,250 hours (actual time worked) during the prior 12 months?

3. Does the employee have unused FMLA/CFRA time available this 12-month period?

NOTE: This is an initial assessment. The items above will be verified by the assigned Personnel Specialist.

If the answer to each of these three questions is **YES**, within 24 hours the supervisor must provide the employee with the following:

- Notice of Eligibility and Rights and Responsibilities ([PO-22](#));

Note: If the above three questions are not yet verified by the Personnel Specialist, indicate on the [PO-22](#): "Pending eligibility check from Personnel Specialist."

- Certification of Health Care Provider – Family Member Condition ([PO-16](#)), if required;
- Certification of Qualifying Exigency – Military Family Leave ([PO-17](#)), if required;
- Certification for Serious Injury/Illness – Military Family Caregiver Leave ([PO-18](#)), if required;
- Certification of Health Care Provider – Employee Health Condition ([PO-20](#)), if required (it is recommended that the employee's Position Essential Functions Duties Statement ([PO-199](#)) is attached to this form.);
- Employee Request for Family or Medical Leave ([PO-21](#)) (*if one was not originally submitted by the employee*).

If the answer to any of these three questions is **NO**, the supervisor must notify the employee that he/she is not eligible for FMLA/CFRA with a [PO-22](#). The [PO-22](#) provides the employee a summary of the employee's rights and responsibilities if approved for FMLA/CFRA leave.

If supervisors are unsure of the answers to any of these questions, they should contact the Sacramento Headquarters' C&P Analyst or the AO, if located in a Region and/or a Unit.

2. Contact the Sacramento Headquarters' C&P Analyst or the AO, if located in a Region and/or a Unit, and advise that he or she has responded to the employee's request for leave, utilizing the [PO-22](#).
3. Forward, as soon as possible, a copy of the [PO-21](#) and [PO-22](#) to the Sacramento Headquarters' C&P Analyst or the AO, depending on the employee's work location.



If the employee is notified of ineligibility, this is the last step in the process for the supervisor.

4. Maintain contact with the employee and inform the Sacramento Headquarters' C&P Analyst or the AO of any changes in the employee's return-to-work status.
5. Review the employee's timesheet and [STD. 634](#) for accurate reporting of time used due to the FMLA qualifying condition. The [STD. 634](#) is required to document FMLA/CFRA usage only.

**NOTE:** It is the supervisor's responsibility to notice the employee and inform him/her of the FMLA/CFRA potential rights, whether or not the employee actually requests FMLA/CFRA leave. Since the supervisor is a representative of the Department, the supervisor is responsible for notifying an employee of FMLA/CFRA leave. An employee's request leave for can be verbal or in writing. In addition, the Department (supervisor) must, within five (5) business days, properly notice and designate the employee's absence as FMLA/CFRA to be in compliance with FMLA/CFRA regulations.

Retroactive designation of FMLA/CFRA leave (back to the date the leave commenced) is allowed if the employee has not yet returned to work, provided that the Department's failure to timely designate leave does not cause harm or injury to the employee.

6. If an employee returns to work with specific restrictions following a serious health condition that does not involve use of intermittent leave, the Department may require the employee to provide a [Medical Treatment/Return to Work \(CAL FIRE-200\)](#) form signed by the employee's treating physician. For the purposes of FMLA/CFRA, the [CAL FIRE-200](#) is used to identify any restrictions or modified work assignments.

#### Classification and Pay Analyst/Administrative Officer's Responsibilities

Headquarters: Classification and Pay Analyst.

\*Region: Administrative Officer III or his/her designee.

\*Unit: Administrative Officer.

*\*These responsibilities may be delegated to the Personnel Specialist (PS).*

When a C&P Analyst or the AO becomes aware of an employee's need for leave, he/she must do the following:

1. Assist the supervisor with questions regarding FMLA/CFRA.
2. Receive the [PO-21](#) and a copy of the [PO-22](#) from the supervisor.
3. Receive the [PO-16](#), [PO-17](#), [PO-18](#), [PO-20](#), or equivalent substantiation from the employee within the required timeframes, if required.

4. Review all related paperwork to ensure FMLA/CFRA criteria is met and approve, delay or deny the request. An eligibility check for actual hours worked and state time will be sent to the PS. Confirmation of these two eligibility requirements from the PS are necessary to determine the approval.
5. If a [PO-16](#), [PO-17](#), [PO-18](#), [PO-20](#), or equivalent substantiation is required and is not received within 15 calendar days, mail a Designation Notice ([PO-23](#)) to notify the employee that any leave taken will not count toward the employee's FMLA/CFRA entitlement until a complete and sufficient certification is received and eligibility is approved.
6. Within five business days of receiving the [PO-16](#), [PO-17](#), [PO-18](#), [PO-20](#) or equivalent substantiation, absent extenuating circumstances, mail a [PO-23](#) to notify the employee that the leave will be designated FMLA/CFRA and count toward the employee's FMLA/CFRA leave entitlement, **or** that the employee's request will not be approved for another reason and coordinate with the employee if additional information is required in order to determine eligibility.

A request shall be delayed due to an incomplete medical certification.

A request shall be denied due to mandatory eligibility requirements not being met (See eligibility 1038.4). A request shall also be denied if supporting documentation for a qualifying event is not received by the C&P Analyst or AO.

7. Complete Section I of the [FMLA/CFRA Checklist](#). Section II of this checklist will be completed by the Personnel Specialist.
8. Upon approval, delay or denial, forward the [FMLA/CFRA Checklist](#) to the PS and retain and/or file the following applicable documents in a designated secure file area (the minimum retention period is three years):
  - [PO-16](#), (if applicable);
  - [PO-17](#) (if applicable);
  - [PO-18](#), (if applicable);
  - [PO-20](#), (if applicable);
  - [PO-21](#) (if applicable);
  - [PO-23](#) (if applicable); and
  - [FMLA/CFRA Checklist](#).

Additionally, notify the supervisor of the FMLA/CFRA approval, delay or denial. Best practice is to notify the supervisor by email.

### **Personnel Specialist's Responsibilities**

1. When a PS becomes aware of an employee's need for leave, he or she must do the following:

Provide the supervisor and/or Sacramento Headquarters' C&P Analyst or the AO, if located in a Region and/or a Unit, with employee information, such as total state service and actual hours worked over prior 12 months, in order to determine initial eligibility.

2. Track the time used for a qualifying FMLA/CFRA event utilizing timesheets and other personnel documents (e.g., Notice of Approval for Non-Industrial Disability Leave). For purposes of calculating an individual's entitlement, the PS should utilize the definition of a "workweek" as explained in the section on leave entitlement. If an employee's workweek is normally 40 hours per week, he or she is entitled to 40 hours multiplied by 12 or 26 workweeks (480 or 1,040 hours). The 12 or 26 workweek leave entitlement may be applied to more than one FMLA/CFRA qualifying event but cannot exceed 12 or 26 workweeks in a 12 month period depending on the qualifying event.
3. Notify the employee, supervisor, and C&P Analyst or the AO when the 12 or 26 workweek entitlement has been exhausted or when the certification expires and FMLA/CFRA leave is still being requested.
4. For an unpaid FMLA/CFRA leave (no usage of paid leave credits), process a Personnel Action Request transaction for a leave of absence to disqualify the pay period. Refer to the Personnel Action Manual for instructions (Section 3.200 – Separation Transaction Codes).
5. For an unpaid FMLA/CFRA leave, complete a [Payroll Adjustment Notice \(STD. 674\)](#) to continue the employee's benefits. A [STD. 674](#) must be completed for each pay period in which benefits are to be continued. The [STD. 674](#) is sent to the State Controller's Office, Benefit Deduction Unit. This assures the state will continue paying its portion of the employee's benefits and also sets up the accounts receivable for the employee's portion of the premium. Refer to the [Payroll Procedures Manual](#) for instructions. The FMLA/CFRA will not continue the Flex Cash benefit for an employee enrolled in the Flex-Elect cash option plan while he or she is on an unpaid leave. If the employee returns to pay status in the same plan year, the enrollment will resume.
6. Complete Section II of the [FMLA/CFRA Checklist](#) to ensure that the employee receives the appropriate FMLA/CFRA entitlements.
7. Recalculate eligibility at the beginning of the 12-month period (January 1) for employees currently approved for FMLA/CFRA. Retain and/or file documents for audit purposes, in accordance with office policy (the minimum retention period is three years).

**FMLA/CFRA FORMS REFERENCE GUIDE****1038.7**

(No. 144 February 2016)

<i>Form:</i>	<i>Name:</i>	<i>Description:</i>
<a href="#">PO-21</a>	Employee Request for FMLA/CFRA Leave	Form for employee to submit to supervisor. Supervisor gives copy to C&P Analyst, AO or PS.
<a href="#">PO-22</a>	Notice of Eligibility, Rights, and Responsibilities	Issued to employee from supervisor, C&P Analyst, AO or PS (prompted from an FMLA/CFRA leave request from the employee or if a need for FMLA/CFRA for an employee is considered). If necessary, the form communicates to the employee that a medical or military certification must be submitted to the C&P Analyst or AO/ PS.
<a href="#">PO-16</a>	Certification of Health Care Provider – Family Member Health Condition	Completed by employee and health care provider; submitted to C&P Analyst or AO/PS. An equivalent substantiation may be accepted; the certification provided must have the minimum required information as required by law.
<a href="#">PO-17</a>	Certification of Qualifying Exigency – Military Family Leave	Completed by employee. Written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation must be attached; submitted to C&P Analyst or AO/PS.
<a href="#">PO-18</a>	Certification for Serious Injury/Illness – Military Family Caregiver Leave	Completed by employee and Department of Defense or Department of Veteran Affairs health care provider. An equivalent substantiation may be accepted; the certification provided must have the minimum required information as required by law; submitted to C&P Analyst or AO/PS
<a href="#">PO-20</a>	Certification of Health Care Provider – Employee Health Condition	Completed by employee and health care provider; submitted to C&P Analyst or AO/PS. It is recommended that the employee's Position Essential Functions Duties Statement ( <a href="#">PO-199</a> ) and/or the Physical/Mental Stress Job Description (if applicable) is attached to this form. An equivalent substantiation may be accepted; the certification provided must have the minimum required information as required by law.

**FMLA/CFRA FORMS REFERENCE GUIDE (Continued)****1038.7**

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<i>Form:</i>	<i>Name:</i>	<i>Description:</i>
<a href="#">PO-23</a>	Designation Notice (FMLA/CFRA) Leave	Completed by C&P Analyst or AO/PS; it is a written document to the employee for notification of an approval, delay or denial of requested FMLA/CFRA leave. An approval would indicate the duration of the approved FMLA/CFRA leave. A delay would note the reason (e.g. medical substantiation was incomplete). A denial would indicate the reason (e.g. 1,250 hours requirement not met). Each time a <a href="#">PO-23</a> is issued to the employee, the supervisor shall be notified.
<a href="#">STD. 634</a>	Absence and Additional Time Worked Report	Completed by employee with supervisor's approval. Must be attached to employee's regular timesheet. The <a href="#">Std. 634</a> should document FMLA/CFRA usage only.

[\(see next section\)](#)[\(see handbook table of contents\)](#)